VERSION BUY SDN BHD

v.

THONG WEE KEE & ANOR

FEDERAL COURT, PUTRAJAYA
RAUS SHARIF PCA
ABDULL HAMID EMBONG FCJ
AHMAD MAAROP FCJ
HASAN LAH FCJ
ABU SAMAH NORDIN FCJ
[CIVIL APPEAL NO: 02(i)-45-08-2013(W)]
8 OCTOBER 2014

LAND LAW: *Caveat - Private caveat - Discovery of private caveat on property - Whether there was breach of sale and purchase agreements - Whether private caveat had been properly lodged and received at Land Registry in accordance with s. 324(1) National Land Code - Whether caveat had been entered or endorsed on register document of title - Whether Registrar has power to reject applications for entry of private caveats which do not comply with s. 323 National Land Code - Whether there were encumbrances on property - National Land Code, s. 322*

LAND LAW: *Restraint on dealings - Caveats - Discovery of private caveat on property - Whether there was breach of sale and purchase agreements - Whether private caveat had been properly lodged and received at Land Registry in accordance with s. 324(1) National Land Code - Whether caveat had been entered or endorsed on register document of title - Whether Registrar has power to reject applications for entry of private caveats which do not comply with s. 323 National Land Code - Whether there were encumbrances on property - National Land Code, s. 322*

The first and second respondents and the first defendant (now deceased) were registered owners of particular parcels of land ('the properties'). The appellant executed three sales and purchase agreements simultaneously ('agreements') with the respondents and the first defendant for the sale and purchase of the properties. Pursuant to the agreements, the appellant paid the respective deposits. Pursuant to a land search that was conducted on the properties, the appellant discovered that a private caveat had been lodged by one Abu Mansor Khalid on the first defendant's property. The appellant thus submitted that this was a fundamental breach of the sale and purchase agreements as the properties were to be free of all encumbrances. As a result, the

A appellant elected to terminate the agreements and sought the recovery of the deposits together with further liquidated damages. The respondents, however, took the position that the first defendant's property was unencumbered because although the private caveat was lodged, it was not registered as it had been B rejected by the registrar. The trial judge, in refusing to strike out the appellant's claim, held that the issues of whether there was at the material time a private caveat lodged against the first defendant's property and whether the appellant was justified in electing to terminate the sale and purchase agreements were C triable issues. The decision was reversed by the Court of Appeal and the appellant's claim against the respondents was struck out. Leave was granted to the appellant to appeal against the decision of the Court of Appeal on the following questions of law (a) whether a private caveat had been properly lodged and D received at the appropriate Land Registry in accordance with s. 324(1) of the National Land Code ('NLC') and which was recognised and disclosed in an official search constituted an actionable encumbrance ('Question 1'); and (b) whether in law a party was required to await the actual endorsement/registration of E a private caveat by the appropriate Land Registry before acting on an official search that disclosed the lodgement of a private caveat to protect its/his interest ('Question 2').

Held (dismissing appeal with costs)

F **Per Hasan Lah FCJ delivering the judgment of the court:**

(1) The said private caveat was received by the Registrar on 11 November 2008. However, that caveat was subsequently rejected by the Registrar. As such, no private caveat had been entered or endorsed on the register document of title of the G first defendant's property pursuant to s. 324(2) of the NLC. There was therefore no private caveat that bound the first defendant's property in respect of the application for entry of the private caveat lodged by the alleged caveator. (para 20)

H **(2)** Section 324(1) of the NLC *inter alia* provides that the Registrar is not supposed to enquire into the validity of the alleged caveator's claim that he had a registrable interest on the land as stated in Form 19B. In other words, when the Registrar receives the application he exercises a purely I administrative function. However, in exercising his administrative function the Registrar has to see that the application for entry of a private caveat is in compliance with

the requirement under s. 323 of the NLC. The Registrar therefore has the power to reject administratively any applications for entry of private caveats which do not comply with s. 323 of the NLC. (para 23)

(3) The word 'encumbrances' in cl. 2.1 of the agreements must, in relation to the private caveat, be read in the context of s. 322 of the NLC. It referred to some impediment in the registered title to the first defendant's property which prevented the registration of title from the first defendant to the appellant. Under the NLC, a caveat meant 'a registered caveat' (s. 5 NLC). Without the requisite registration, there was no encumbrance on the first defendant's property. Thus, the answer to the first question posed was in the negative and the answer to the second question posed was in the affirmative. (paras 24 & 25)

Bahasa Malaysia *Translation Of Headnotes*

Responden pertama dan kedua dan defendan pertama (sekarang sudah meninggal) adalah pemilik berdaftar bidang tanah tertentu ('hartanah'). Perayu melaksanakan tiga perjanjian jual beli secara serentak ('perjanjian') dengan responden-responden dan defendan pertama bagi jual beli hartanah-hartanah tersebut. Selaras dengan perjanjian-perjanjian tersebut, perayu telah membayar deposit masing-masing. Menurut pencarian tanah yang dilakukan ke atas hartanah-hartanah tersebut, perayu mendapati bahawa satu kaveat persendirian telah dikemukakan oleh satu Abu Mansor Khalid ke atas hartanah defendan pertama. Dengan itu, perayu berhujah bahawa ini adalah kemungkiran asasi perjanjian jual beli kerana hartanah-hartanah sepatutnya bebas daripada segala halangan. Akibatnya, perayu telah memilih untuk menamatkan perjanjian-perjanjian tersebut dan untuk mendapatkan balik deposit-deposit yang telah diberi berserta ganti rugi jumlah tertentu. Responden-responden, walau bagaimanapun, mengambil kedudukan bahawa hartanah defendan pertama tidak mempunyai halangan kerana walaupun kaveat persendirian telah dikemukakan, ia tidak didaftarkan kerana ia telah ditolak oleh pendaftar. Hakim bicara, yang enggan menolak tuntutan perayu, memutuskan bahawa isu-isu sama ada pada waktu material itu satu kaveat persendirian telah dikemukakan terhadap hartanah defendan pertama dan sama ada perayu mempunyai justifikasi dalam pemilihannya untuk menamatkan perjanjian jual beli adalah isu-isu yang perlu

dibicarakan. Keputusan itu telah diakas oleh Mahkamah Rayuan dan tuntutan perayu terhadap responden-responden telah dibatalkan. Kebenaran telah diberikan kepada perayu untuk merayu terhadap keputusan Mahkamah Rayuan atas beberapa persoalan undang-undang (a) sama ada kaveat persendirian telah dikemukakan sewajarnya dan telah diterima oleh Pejabat Pendaftar Hakmilik yang betul menurut s. 324(1) Kanun Tanah Negara ('KTN') dan diiktirafkan dan didedahkan dalam satu carian rasmi menjadikan satu halangan yang boleh didakwa ('soalan 1') dan (b) sama ada dari segi undang-undang sebuah pihak diperlukan untuk menunggu pengesahan/pendaftaran sebenar kaveat persendirian melalui Pejabat Pendaftar Hakmilik yang sesuai sebelum bertindak ke atas carian rasmi yang mendedahkan kemasukan kaveat persendirian untuk melindungi kepentingannya.

Diputuskan (menolak rayuan dengan kos)
Oleh Hasan Lah HMP menyampaikan penghakiman mahkamah:

(1) Kaveat persendirian tersebut telah diterima oleh Pendaftar pada 11 November 2008. Walau bagaimanapun, kaveat itu kemudiannya telah ditolak oleh Pendaftar. Dengan itu, tiada kaveat persendirian telah dimasukkan atau disahkan pada dokumen hakmilik daftar hartanah defendan pertama menurut s. 324(2) KTN. Oleh itu, tiada kaveat persendirian yang mengikat hartanah defendan pertama berkenaan permohonan kemasukan kaveat persendirian yang telah dikemukakan oleh pengkaveat yang didakwa.

(2) Seksyen 324(1) KTN antara lain memperuntukkan bahawa Pendaftar tidak sepatutnya menyoal tentang kesahihan tuntutan pengkaveat yang didakwa bahawa dia mempunyai kepentingan berdaftar ke atas tanah seperti yang dinyatakan dalam Borang 19B. Dalam erti kata lain, apabila Pendaftar menerima permohonan dia hanya melaksanakan fungsi pentadbiran semata-mata. Walau bagaimanapun, dalam melaksanakan fungsi pentadbiran Pendaftar harus melihat bahawa permohonan kemasukan kaveat persendirian adalah selaras dengan keperluan s. 323 KTN. Pendaftar dengan itu mempunyai kuasa untuk menolak secara pentadbiran apa-apa permohonan bagi kemasukan kaveat persendirian yang tidak mematuhi s. 323 KTN.

(3) Perkataan 'encumbrances' dalam kl. 2.1 perjanjian harus, berhubung dengan kaveat persendirian, dibaca dalam konteks s. 322 KTN. Ia merujuk kepada beberapa halangan dalam hakmilik berdaftar kepada hartanah defendan pertama yang telah menghalang pendaftaran hakmilik daripada defendan pertama kepada perayu. Di bawah KTN, kaveat adalah 'kaveat berdaftar' (s. 5 KTN). Tanpa pendaftaran yang diperlukan, tiada halangan ke atas hartanah defendan pertama. Oleh itu, jawapan kepada soalan pertama adalah dijawab secara negatif dan jawapan kepada soalan kedua adalah dijawab secara afirmatif.

Case(s) referred to:

AKB Airconditioning & Electrical Sdn Bhd v. Hew Foo Onn & Anor [2002] 1 LNS 26 HC ***(refd)***

Chng Sin Poey & Sons Sdn Bhd v. Quek Lian Meng [1976] 1 LNS 14 HC ***(refd)***

Eng Mee Yong & Ors v. Letchumanan [1979] 1 LNS 18 PC ***(refd)***

Lee Chin Cheng Dengkil Oil Palm v. Kaplands Sdn Bhd [2002] 4 CLJ 753 CA ***(refd)***

Mewah Plus Property Sdn Bhd v. Kluang District Government Servants Co-operative Housing Society Ltd [2000] 2 CLJ 236 CA ***(refd)***

Official Receiver And Provisional Liquidator Maril-Rionebel (M) Sdn Bhd v. Anafartalar Caddesi Sdn Bhd [2006] 2 CLJ 757 HC ***(refd)***

Ong Chat Pang & Anor v. Valliappa Chettiar [1971] 1 LNS 96 FC ***(refd)***

Registrar of Titles, Johore v. Temenggong Securities Ltd [1976] 1 LNS 135 PC ***(refd)***

T Damodaran v. Choe Kuan Him [1979] 1 LNS 107 PC ***(refd)***

Legislation referred to:

National Land Code, ss. 5, 298, 322(2), (3), 323(1), 324(1), (2), 329(2)

Rules of the High Court 1980, O. 18 r. 19(1)(b), (c), (d)

For the appellant - C Sri Kumar (Intan Azlina Mazlan with him); M/s Kumar Partnership

For the respondents - Bastian Vendargon (Jananee Gopal with him); M/s Chellam Wong

[Appeal from Court of Appeal; Civil Appeal No: W-02(IM)-717-03-2012]

Reported by Suhainah Wahiduddin

JUDGMENT

Hasan Lah FCJ:

[1] Leave was granted on 16 July 2013 to the appellant to appeal against the decision of the Court of Appeal given on 2 August 2012 on the following questions of law:

(a) Whether a private caveat that had been properly lodged and received at the appropriate land registry in accordance with s. 324(1) of the National Land Code and which is recognised and disclosed in an official search constitutes an actionable encumbrance ("question 1"); and

(b) Whether in law a party is required to await the actual endorsement/registration of a private caveat by the appropriate land registry before acting on an official search that discloses the lodgement of a private caveat to protect its/his interest ("question 2").

[2] The appellant was the plaintiff in the High Court and the respondents were the second and third defendants respectively.

[3] The appellant filed an action in the High Court against the respondents and another defendant, the late Hajjah Saleha binte Mohamed Ali (the first defendant named in the High Court suit), for a purported breach of three sale and purchase agreements executed simultaneously on 18 April 2008.

[4] On 2 November 2011, the respondents filed an application to strike out the appellant's claim pursuant to O. 18 r. 19(1)(b), (c) and/or (d) of the Rules of the High Court 1980 premised on the respondents' assertion that the terminations of the three sale and purchase agreements were without justification. The said application was dismissed on 27 February 2012 by the learned High Court Judge on the ground that the action was not one which was obviously unsustainable. The respondents then appealed to the Court of Appeal against the decision of the High Court. The respondents' appeal was allowed with costs on 2 August 2012.

[5] The relevant facts of the case are these. The first and second respondents and the first defendant were all individuals and registered owners of particular parcels of land ("the properties"). The details are as follows:

(a) The first defendant was the administrator of the parcel of land known as PN 21364, Lot 525, Town and District of Kuala Lumpur,

(b) The first respondent was the registered owner of the parcel of land known as PN 13348, Lot 466, Seksyen 19, Town and District of Kuala Lumpur; and

(c) The second respondent was the registered owner of the parcel of land known as PN 22055, Lot 526, Town and District of Kuala Lumpur.

[6] On 18 April 2008 the appellant executed three sale and purchase agreements simultaneously with the respondents and the first defendant for the sale and purchase of the properties. Pursuant to the agreements, the appellant paid the deposit of RM521,840 to the first defendant, RM583,400 to the first respondent and RM590,280 to the second respondent respectively.

[7] Clause 2.1 of the sale and purchase agreements provided *inter alia* that "... the vendor hereby agrees to sell and the purchaser hereby agrees to purchase the property free from all encumbrances ... subject to the terms and conditions herein after contained and subject to the purchaser entering into the sale and purchase agreements for the purchase of the remaining properties. The completion of the purchase of this property and the remaining properties shall be carried out simultaneously ...".

[8] On or about 20 November 2008, pursuant to a land search that was conducted on the properties, the appellant discovered that a private caveat had been lodged by one Abu Mansor bin Khalid on the first defendant's property on 11 November 2008 *vide* Presentation No. 18804/2008. On 21 November 2008, the appellant's solicitors wrote a letter to Messrs Leong Yeng Kit, who represented the respondents as vendors in the sale and purchase agreements, informing of purported private caveat lodged on 11 November 2008 over the property belonging to the first defendant ie, Lot 525. Based on that, the appellant contended that the respondents had breached the sale and purchase agreements. The appellant took the position that this was a fundamental breach of the sale and purchase agreements as the properties were to be free of all encumbrances. As a result, the appellant elected to terminate the agreements and sought the recovery of the deposits together with further liquidated damages in the sum of RM1,696,520.

[9] By letter dated 25 November 2008 the respondents' solicitor wrote and stated that a land search had been conducted on the first defendant's property on 24 November 2008 which showed that the private caveat had ceased to exist. The respondents therefore took the position that the first defendant's property was unencumbered because although the private caveat was lodged, it was not registered as it had been rejected by the Registrar.

[10] The learned trial judge, in refusing to strike out the appellant's claim, held that the issues of whether there was at the material time a private caveat lodged against the first defendant's property and whether the appellant was justified in electing to terminate the sale and purchase agreements were triable issues. As stated earlier that decision was reversed by the Court of Appeal and in the result the appellant's claim against both the respondents was struck out. Unfortunately we did not have the benefit of the ground of judgment of the Court of Appeal which reversed that decision.

[11] Learned counsel for the appellant submitted that Question 1 ought to be answered in the affirmative for the following reasons. Firstly, ss. 324(1) and (2) of the National Land Code ("NLC") clearly establish that a private caveat takes effect at the time the application for the entry of the private caveat was received by the land registry and not upon the eventual registration thereof. In support of that contention learned counsel cited the cases of *AKB Airconditioning & Electrical Sdn Bhd v. Hew Foo Onn & Anor* [2002] 1 LNS 26; [2002] 5 MLJ 391; and *Official Receiver And Provisional Liquidator Maril-Rionebel (M) Sdn Bhd v. Anafartalar Caddesi Sdn Bhd* [2006] 2 CLJ 757.

[12] Secondly, the mechanism of registration of private caveat in Malaysia pursuant to the NLC is relatively straightforward. So long as the requisite forms (Form 19B) are in order, the Registrar has no discretion in the matter but must register the private caveat that is applied for. It is not the duty of the Registrar to inquire into whether the application for the entry of the private caveat is validly made. In support of that proposition learned counsel cited the cases of *Eng Mee Yong & Ors v. Letchumanan* [1979] 1 LNS 18; [1979] 2 MLJ 212; and *Ong Chat Pang & Anor v. Valliappa Chettiar* [1971] 1 LNS 96; [1971] 1 MLJ 224. It was therefore submitted that the private caveat in respect of Lot 525 was effective and was in place on 11 November 2008 and the

question of its removal or rejection did not arise. The private caveat lodged against the first defendant's property on 11 November 2008 crystallised into an encumbrance on the first defendant's property immediately thereafter.

[13] With regard to question 2, learned counsel for the appellant submitted that the question ought to be answered in the affirmative because a caveat is entered/endorsed onto the title merely to protect someone's interest and to act as a statutory injunction. It is not 'registered' to create an interest or enlarge a pre-existing interest. A private caveat which had been properly lodged in accordance with s. 324(1) of the NLC and which is recognised and disclosed in an official search becomes an actionable encumbrance at the time of receipt of the application.

[14] Learned counsel for the respondents, on the other hand, submitted that only a registered private caveat would be tantamount to an encumbrance within the meaning of a covenant against encumbrances. In support of that proposition learned counsel cited the following cases:

(a) *T Damodaran v. Choe Kuan Him* [1979] 1 LNS 107;

(b) *Lee Chin Cheng Dengkil Oil Palm v. Kaplands Sdn Bhd* [2002] 4 CLJ 753; and

(c) *Mewah Plus Property Sdn Bhd v. Kluang District Government Servants Co-operative Housing Society Ltd* [2000] 2 CLJ 236.

[15] Learned counsel for the respondents contended that under s. 324 of the NLC a private caveat does not take effect at the time of its lodgement but upon its endorsement on the register document of title. Learned counsel for the respondents agreed with the appellant's submission that so long as the requisite forms are in order, the Registrar has no discretion in the matter but must register the private caveat that is applied for. However, learned counsel for the respondents contended that under s. 298 of the NLC the Registrar is given the power to reject or suspend any instrument not fit for registration.

[16] In the instant case the alleged caveator submitted Form 19B together with a sworn statement by way of a statutory declaration in support of the same based on the fact that he claimed to be the stepson of the late husband of the late first defendant and

was entitled to 1/4 share in the property according to a purported agreement. The alleged caveator however failed to furnish evidence to the Wilayah Land Office of the purported agreement. It was submitted by learned counsel for the respondents that the alleged caveator in the present case did not even satisfy the pre-requisite of s. 323 of the NLC. As such, the Registrar had rightly rejected the purported lodgement by the alleged caveator as the Registrar was empowered to do so and that the property was never encumbered.

[17] Section 324 of the NLC provides:

> (1) The Registrar shall note on any application under section 323 the time at which it was received (being, in the case of any application sent by post, the time at which it was withdrawn from its cover in the Registry or, as the case may be, Land Office) and, subject to sub-section (2) of section 329, shall as soon as may be thereafter (and without being concerned to enquire into the validity of the claim on which it is based) give effect thereto by entering the caveat applied for in the manner provided by sub-section (2).
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> (2) The entry of any private caveat shall be effected by the endorsement on the register document of title, under the hand and seal of the Registrar, of the words "Private Caveat", together with a statement specifying -
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> (a) whether the caveat binds the land itself or an undivided share in the land, or a particular interest therein only;
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> (b) the person or body on whose application it was entered;
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> (c) the time from which it is effective (being the time of receipt of the application, as noted thereon pursuant to of sub-section (1)); and
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> (d) the reference under which the application is filed.
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> (3) As soon as may be after the entry of any such caveat, the Registrar shall serve a notification in Form 19A upon the proprietor of the land or an undivided share in the land bound thereby or, in the case of a caveat binding a particular interest only, upon the person or body in whom that interest is for the time being vested.

[18] Under s. 324(1) of the NLC it is provided that the Registrar shall, without being concerned to enquire into the validity of the claim under s. 323(1) is based, give effect to the application for the private caveat by entering the caveat applied for in the

manner provided under sub-s. (2). Under sub-s. (2) it is provided that the entry of any private caveat shall be effected by the endorsement on the register document of title by the Registrar the words "Private Caveat", together with a statement specifying the four matters stated thereunder. One of the matters is the time from which it is effective which is the time of receipt of the application for entry of the private caveat. Under sub-s. (3) the Registrar is then required to serve a notification in Form 19A upon the proprietor of the land or an undivided share in the land.

[19] It is clear that under s. 324 of the NLC a private caveat would become effective only after the requirements under sub-s. (2) of s. 324 of the NLC have been complied with. However, pursuant to sub-s. 2(c) priority for entry of the caveat dates from the time of receipt of the application and not from the time the endorsement is made on the register document of title. In other words, once the Registrar complied with the requirements of sub-s. (2) the private caveat would have the effect as specified in sub-s. (2) or (3) of s. 322 of the NLC.

[20] In the instant case the said private caveat was received by the Registrar on 11 November 2008 *vide* Presentation No. 18804/2008. However, that caveat was rejected by the Registrar subsequently. As such, no private caveat had been entered or endorsed on the register document of title of the first defendant's property pursuant to s. 324(2) of the NLC. There was therefore no private caveat that bound the first defendant's property in respect of the application for entry of the private caveat lodged by the alleged caveator.

[21] It is pertinent to note that under s. 322 of the NLC only a private caveat that had been entered by the Registrar on the register document of title would have the effect specified in sub-ss. (2) or (3) of that section, namely to prohibit the registration, endorsement or entry on the register document of title of the land:

(a) Any instrument of dealing and any certificate of sale,

(b) Any claim to the benefit of any tenancy exempt from registration; and

(c) any lien-holder's caveat.

In short, the effect of such a private caveat is to freeze the register at least until the caveat is removed (*Lee Chin Cheng Dengkil Oil Palm v. Kaplands Sdn Bhd (supra)*.

[22] In *Mewah Plus Property Sdn Bhd (supra)*, the agreement dated 11 July 1994 provided that the respondent (vendor) would undertake to remove any "encumbrances" over the property and the appellant (purchaser) was entitled to vacant possession thereof. Subsequently, the appellant discovered that the property had been encroached upon by the respondent's neighbour. The appellant refused to pay the balance purchase price contending that the encroachment had impeded the completion of the sale. The trial judge ruled that the encroachment was no impediment to completion of the sale, that there was no breach of the agreement by the respondent, and that the respondent had therefore given vacant possession of the property. On appeal, the Court of Appeal held that the word "encumbrance" in the agreement referred to some impediment in the registered title to the said property which prevents the registration of title from the respondent to the appellant. "Encumbrances" in the context of the agreement means an encumbrance in the NLC. At p. 241 of the judgment, the Court of Appeal had this to say:

> With due respect to counsel for the appellant, we are unable to agree with his argument. In our judgment, the work "encumbrances" in the two clauses already quoted refers to some impediment in the registered title to the said property which prevents the registration of title from the respondent to the appellant. As was pointed out to counsel during argument, "encumbrances" in the context of the agreement in question means an encumbrance in the National Land Code sense. As to what amounts to an encumbrance in the context of the National Land Code, reference may be usefully made to two decisions of the Privy Council on the point.
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> The first is *T Damodaran v. Choe Kuan Him* [1979] 2 MLJ 267b, where Lord Diplock when delivering the advice of the board said (at p 269):
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> > In the National Land Code it is s. 340 that expressly provides that the title of a person registered as proprietor of any land shall be indefeasible. The only exceptions are where there has been fraud, misrepresentation, forgery or an *ultra vires* acquisition purporting to have been made under statutory authority. None of these exceptions apply

> to the instant case. Interests in land, short of proprietorship, which are capable of being registered are leases, charges and easements. If registered they would amount to encumbrances within the meaning of a covenant against encumbrances; but unless registered they do not derogate from the unencumbered title of the registered proprietor of the land. Claims to be untitled to the proprietorship of land or a registrable interest in land, whether or not they are the subject of litigation, are not registrable as encumbrances on a registered title. Instead they are protected by the system of private caveat which, while leaving the registered title unqualified and intact, have the effect of preventing any dealing with it by the registered proprietor so long as the caveat remains in force; that is, until it is removed from the register. The way in which this system of protection operates was dealt with by their Lordships in the recent case of *Eng Mee Yong & Ors v. V Letchumanan* [1979] 2 MLJ 212, to which reference may conveniently be made.
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> The second is *Letchumanan Chettiar v. Palaniappa Chettiar* [1983] 1 MLJ 6, where (at p. 9) Lord Templeman referred to a caveat upon the register as "the only relevant encumbrance", thereby rendering a wider meaning to that expression than that given it by Lord Diplock in *T Damodaran v. Choe Kuan Him (ibid)*.

[23] Section 324(1) of the NLC *inter alia* provides that the Registrar is not supposed to enquire into the validity of the alleged caveator's claim that he had a registrable interest on the land as stated in Form 19B. In other words when the Registrar receives the application he exercises a purely administrative function. (See *Eng Mee Yong & Ors v. Letchumanan* [1979] 1 LNS 18; [1979] 2 MLJ 212; *Registrar of Titles, Johore v. Temenggong Securities Ltd* [1976] 1 LNS 135; [1976] 2 MLJ 44). However, in exercising his administrative function the Registrar has to see that the application for entry of a private caveat is in compliance with the requirement under s. 323 of the NLC. The Registrar therefore has the power to reject administratively any applications for entry of private caveats which do not comply with s. 323 of the NLC. If the application complies with s. 323 of the NLC the Registrar must enter the caveat on the register. In *Chng Sin Poey & Sons Sdn Bhd v. Quek Lian Meng* [1976] 1 LNS 14; [1979] 1 MLJ 98 at p. 99 Syed Othman J opined:

> ... It must be said of this application that although under section 324(1) of the Code the Registrar is not required to enquire into the validity of the claim this does not mean that he cannot reject an application for entry of a caveat when it does not comply with the substance of the form, or, as in this case, when the application does not specify whether caveat is to bind the land itself or a particular interest ...

[24] In our view the word "encumbrances" in cl. 2.1 of the agreements must, in relation to the private caveat, be read in the context of s. 322 of the NLC. It refers to some impediment in the registered title to the first defendant's property which prevents the registration of title from the first defendant to the appellant. Under the NLC, a caveat means a "registered caveat" (s. 5 NLC). Thus, without the requisite registration, there was no encumbrance on the first defendant's property.

[25] For the reasons given our answer to the first question posed in this appeal is in the negative and the answer to the second question posed is in the affirmative. Accordingly the appeal is dismissed with costs.